

3/12/2012

To: Doug Self, Driggs Planning and Zoning Administrator, The Driggs Planning and Zoning Commission Members, Angie Rutherford, Teton County Planning

From: Jim Fitzgerald, 529 Quaking Aspen Drive, The Aspens and one of the holders of Teton County Instrument #199582 – Property Boundary Agreement with Dream Catcher Estates

Regards: Comments on The Willows and Doug's Staff Report regarding the 14 Mar. PZ Meeting on the amended plat..

Doug, Driggs PZC, and Teton County Staff

Just a couple of things I would like to clarify:

1. Doug on Page 4 of your PZA Staff Report you provide a partial quote from my August 23, 2011 letter suggesting an unpaved fire turn around behind our house:

Mr Fitzgerald "would be willing to release Floyd and Ginny ... from requirements on future landscaping , etc. etc. if a fire turn-around is installed, etc.

I believe all parties should be reminded that "my willingness to release" is conditioned as noted in the next paragraph of that August 23 letter that you did not include:

"This would also allow Dreamcatcher to avoid or reduce any future boundary landscaping if they could come to agreement on a revision with us (Fitzgeralds) and Berg. (Richard Berg, The Fitzgeralds and Dreamcatcher signed the Property Boundary Agreement and all parties would have to agree on modification of the landscaping provisions).

Also please note that my August 23, 2011 letter was a **suggestion for Driggs, The County, and Dream Catcher to consider.** At the bottom of the page I ask whether Driggs, Teton County and Dream Catcher will buy into it. Until I received the information you sent Friday I did not know what any decision was on this matter other than an e-mail from Floyd saying it was not a bad idea. Dream Catcher, Berg and us have not gotten together to discuss the landscaping issue any further.

Also your Friday (Mar. 9) e-mails indicate a pedestrian easement is now planned along the old Salix Way corridor behind our property. That may still make it necessary for some landscaping so please make sure you all understand that. I do think we could work out ways to reduce the amount and cost of landscaping but please do not write it "into the books" as a done deal to eliminate landscaping since the Pedestrian Easement is now in play.

2. The addition of a pedestrian/bike easement from South Pathway to Ski Hill Road –

As noted above this is news to us and we do not have any objection other than to point out that our property may be adversely effected by such a pathway unless Dreamcatcher or City/County provide some signage to prevent trespass across our property along the sewer line easement that opens onto Quaking Aspen Drive. In good weather we get quite a few people taking a short cut from Quaking Aspen Lane up across our easement to get to Teton Creek, including a particularly annoying horsewoman from Driggs that I have asked on several occasion to not cross our property but seems not to care.

Also will the “pedestrian/bike” easement be open to motorcycles, ski machines, horses, etc. and is there a possibility of periodic “winter closures” when wildlife are trying to make it through the winter. For example, at least 8 whitetail does and fawns spent almost two solid months on the site from late December to late February. Much “people traffic” is hard on critters in the winter.

3. Minor Point – It looks like Nelson Engineering used an old, old, old, preliminary map to work from (probably 2005) since they still show the first sewer line proposed on this revision. The SS line running from just west of Teton Creek and down along the property line of Cindy Winslow to open onto Quaking Aspen Drive does not belong on this Plat. It was proposed long ago and rejected for a number of reasons.

4. We note that the sewer line will be completed from the Manhole behind the Richard Berg property to the north end of Phase I during the first stage of development. Does This also include paving and road upgrade on the Phase I section if so I would like to make sure that the County Engineer (does Driggs have an Engineer?) and Nelsons make sure that they do not seriously increase run off into the drainage channel between lots 7 and 8. Last spring as perhaps you are aware culverts on the east side of Quaking Aspen Drive were totally full and a bit of water seeped onto Aspen Drive by the Winslow and Auer. Much more flow in that drainage channel will present road problems on Aspen Drive.

Thanks for consideration of this letter.

Sincerely, Jim Fitzgerald

Aug 23 2011

To: Doug Self, Driggs Planning and Zoning
Angie Rutherford, Teton County Planning
Floyd Hill and Ginny Griggs – Dreamcatcher Estates
From:: Jim Fitzgerald, 529 Quaking Aspen Drive

Regards: Willows Amendments

I realize this is late, but Doug just sent me some comments on his hearing Wednesday night. Please see if you can answer the following:

1. Does the Fire Marshall need a turn around that **is paved and meets county road (or Driggs, etc. standards, or can such a turn around be a mowed/brush free area** at the end of Lot 10 when that phase of development is finished.?

Note – Salix way sits on rocky cobble all the way from lot 9 to Teton Creek. It is not Going to be a mud hole, etc. impassable to a fire truck if the turn around were not Paved. (Site could also be plowed periodically in winter for access).

2. Reason for question relates to the Boundary Agreement I have with Dreamcatcher. If an unpaved turn around for fire access were acceptable to Driggs and County (actual pavement for Salix way would end at proximity to driveway for lot 10) then I would be willing to release Floyd and Ginny etc. from requirements on future landscaping and be satisfied with the sewer and water access lines from the end of Salix way to Teton Creek just remaining as “come-back” native vegetation provided some soil is put down. The track may be used periodically for water/sewer business but some driving on it would not be that damaging.

This would also allow Dreamcatcher to avoid or reduce any future boundary landscaping if they could come to agreement on a revision with us (Fitzgeralds) and Berg. Potential of around \$20,000 in savings plus cost of putting in irrigation system, etc.

Any chance of Driggs and Teton County buying into this?

Floyd and Ginny any interest on your part?



Valley Advocates for Responsible Development

June 8, 2011

Driggs P&Z Commission
60 Main Street
Driggs, Idaho 83422

RE: Willows proposed plat amendments

Dear Commissioners:

As you know, the Willows PUD is located in the Driggs Area of Impact, which is under the county's jurisdiction, but is controlled by Driggs ordinances. At this time, it is not clear what city regulations exist which enable this project to be replatted. Teton County recently adopted a replatting ordinance with a redesign process and incentives for defunct subdivisions to significantly reduce their number of lots, significantly decrease environmental impacts, and significantly reduce governmental costs. Driggs has not yet adopted such an ordinance, so it is currently unclear how this application will be processed. According to the City's planning staff, there are approximately 1,000 vacant platted lots within the city limits of Driggs. In addition, there are an unknown number of vacant platted lots in the city's impact area, such as The Willows and Red Tail.

The timeline for this project is long and complicated, dating back to 2006(see attached timeline). This application proposes to reduce the number of lots from 25 to 22, increase the setbacks from Teton Creek, and remove the bridge over Teton Creek. In exchange, the applicant requests a 12-year extension of time until 2023 to complete the improvements. **VARD respectfully submits the following questions to be considered by the City of Driggs:**

Ordinance questions:

- Can this PUD be replatted under the current provisions in the Driggs code?
- City ordinances allow for a discretionary 1-year extension of a development agreement.¹ Do the city's ordinances allow extensions beyond a year? Is there any time limit for extending development agreements?

Policy questions:

- Should Driggs adopt ordinances that set forth a replatting process?
 - If so, what should the overall goals of the ordinance be? Significant reduction of density? Incentivizing higher density closer to the city center and discouraging higher density in the impact area? Significant reduction of environmental impacts? Blanket extensions of time?
 - Will expired projects be eligible for replatting?

¹ Driggs Code § 10-5-4-A



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- Should committed financing be required in order to replat?
- The application for this PUD was first filed in 2006 under the 2005 city ordinances. It was approved in 2008. The requested extension is until 2023.
 - Should the city grant extensions of time for projects, and if so, what is the largest extension the city will grant?
 - What types of plat changes will warrant the great possible extension of time?

Contractual questions:

- Section 12 of the Willows development agreement requires bonding of 125% prior to plat recordation. Section 25(d) requires that any and all changes to the agreement must be in writing signed by the city, county, and developer. On November 10, 2008, the Board of County Commissioners granted by motion a conditional recording extension until June 12, 2009 contingent upon a 125% letter of credit being submitted within 120 days of recordation. However, the plat was not recorded until June 15, 2009 and this 125% letter of credit was never submitted within the required 120 days, or at all to date. On November 9, 2009 (147 days after recordation) the Board conditionally amended the development agreement by motion to allow the 125% letter of credit to be submitted within 90 days of construction. None of these changes have been approved in writing by the city, county, and developer as required in Section 25(d).
 - Is the June 15, 2009 recordation valid in light of the county's express conditions being unfulfilled by the June 12, 2009 deadline, and no 125% letter of credit submitted within 120 days?
 - Is the June 15, 2009 recordation valid in light of the Section 12 financing requirements in the development agreement being unfulfilled?
 - Are the county's unilateral subsequent changes to the financing requirements and development agreement valid in light of Section 25(d) in the development agreement?
- What is the ownership status of the Willows property, particularly with regards to lot #3, which was conveyed 31 months prior to the plat recordation?² Who are the property owners of the Willows for purpose of signing off on all plat changes?

² Teton County Inst. # 182926. Both Idaho Code § 50-1316 and Driggs Code §§ 10-2-1 and 10-2-10 prohibit the conveyance of lots prior to plat recordation. Such conveyance is a misdemeanor accruing for every day of the ongoing violation.



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Logistical questions and infrastructure questions:

- The Willows obtained final approval three years ago. What percentage of the infrastructure has been completed? What percentage is unfinished?
 - What infrastructure improvements (particularly those pertaining to sewer, water, and flood protection) are likely to become obsolete between now and 2023?
- How will the east side of the property be accessed and who will maintain this road? When will this road be upgraded? Are the costs of improving this access across the old county landfill property included in the engineer's estimate?
- What is the legality of berm and entrance sign built in the public right of way and scenic corridor along Ski Hill Road?
- Ten of the proposed lots are located in the newly-revised floodplain delineation, as are the access roads. It would be a good idea to pay attention to this spring's runoff and its impacts on the property, particularly in light of the berm build along Ski Hill road which may act as retainer for the floodwaters.
- To whom will the open space be deeded?

These are all important questions that must be carefully weighed by both the City and the County. Thank you once again for all of your hard work in the service of our community.

Anna Trentadue
WARD Program Director / Staff Attorney



Valley Advocates for Responsible Development

TIMELINE

- **January 2006:** This project was originally submitted to the Driggs P&Z where it was recommended for denial based on flooding and environmental concerns.
- **November 27, 2006:** Lot 3 of the proposed Willows subdivision was conveyed to David and Michelle Cutler.
- **June 12, 2008:** After several revisions and hearings, this PUD was finally approved by the Board of County Commissioners.
- **November 10, 2008:** Driggs ordinances require plats to be recorded within 6 months of final plat approval (ie: Dec 12, 2008). The developer requested that Teton County another six-month recording extension in addition to the six months allowed by Driggs' ordinance. On November 10, 2008, the BOCC granted a conditional extension until June 12, 2009 provided that a letter of credit of 125% of the engineer's estimate was submitted within 120 of recordation.
- **June 15, 2009:** Three days after the county's deadline, the Willows plat was recorded. The 125% letter of credit was not submitted within 120 days.
- **November 9, 2009:** The prior Board of County Commissioners conditionally amended the Willow's development agreement by motion to require a 125% letter of credit to be submitted within 90 days of construction.
- **June 8, 2011:** Driggs planning & zoning holds a hearing to consider a 12-year extension of time to complete the Willows until 2023 in exchange for reducing lots from 25 to 22, increasing the setbacks from Teton Creek, and eliminating the bridge over Teton Creek.
- **June 9, 2011:** The Willows development agreement expires.
- **June 15, 2011:** Deadline by which Driggs Code § 10-5-4-A requires all improvements to be complete.
- **December 31, 2012:** Original 115% letter of credit will expire.

5/30/2011

To: Driggs Planning and Zoning Commission and Mr. Doug Self,
City Planner.

From: Jim and Jody Fitzgerald, 529 Quaking Aspen Drive, Driggs, Id 83422

Regards: Proposed Plat Amendment for the Willows Subdivision

Please consider these comments at your hearing on June 8. Thank you.

We are adjacent landowners to the Willows subdivision (Dream Catcher Estates LLC) and allowed the Willows and Targhee Hill Estates an easement across our property for the installation of the Teton Creek Trunk Sewer line. We, as well as our neighbor Mr. Richard Berg, have a Property Boundary Agreement (Teton County Instrument #199582) with Dream Catcher Estates LLC detailing certain expectations on the part of parties involved with regards to actions along the boundary and along Salix Way. That agreement was one of several we (Fitzgerald's) made with DCELLC and THELLC, before we would consent to the sewer easement across our property. We have quite a few comments regarding the Plat Amendment, based on review of the Master Plan map.

Positive Proposed Changes:

1. The elimination of the motorized bridge across Teton Creek. This should aid in the ongoing creek restoration work and also benefit wildlife. We note the wording "eliminate the motorized bridge."

Question 1: Is the developer considering a pedestrian bridge across the river at some point in time?

Question 2: With elimination of the portion of Salix Way from lot 10 to the South side of Teton Creek can the City of Driggs/Teton County request the Developer reclaim areas along the Teton Trunk Sewer Line presently devoid of topsoil and vegetation? We believe this should be done as part of Phase I activities. (See Attached Photographs).

We understand that ROW will still be needed to extend a water line to and across Teton Creek for Phase IV, but it would seem that much of the sewer ROW could be repaired at present since the sewer and water lines must be kept fairly far apart.

2. Elimination of two lots and changes in size or shape of other lots . The changes seem to benefit flood plain protection and riparian open space.

Negative Aspects of the Proposed Amendments:

1. Proposed Phasing Scheme for the development. (Based on Master Plan Map)

The Developer proposes 10 north side lots be developed in three phases: Phase 1(3 lots), Phase 2(5 lots), and Phase 3(2 lots). Phase 4 (12 lots) is proposed as a single unit.

Question 1. We wonder why 3 phases (one with only two lots) on the North side of the property. To us Phase 1 should include lots 6-10 and Phase two lots 1-5. **We also find it interesting that by making lots 9 and 10 Phase 3 the developers avoid having**

to meet agreed on conditions in our Property Boundary Agreement until maybe 10-15 years into the future. We feel somewhat “betrayed” after granting the easement that allowed the Willows to avoid costly engineering options for alternate sewerage transport. and then having them turn around and say – we are not going to live up to our part of the agreement for over a decade by manipulating phasing of lots 9 and 10.

2. Scheme for utility development. The utility plan shown on the Master plan map seems to make little sense in terms of the “piece-meal” approach to construction. We have made some estimates of approximate lengths of proposed utility systems that have to be added for each Phases using the scale of 1”=100’

Phase 1 (Lots 6,7,8)

Estimated length of pavement = 400’ The Master plan shows paved road from the intersection with Ski Hill Road to an end point maybe 50 feet along the lot 7 north boundary. It does not indicate pavement extending on Salix Way to lots 7 and 8. It also does not seem to have any emergency vehicle turn around at the end of the pavement.

Question: Does that mean emergency vehicles come all the way on an unfinished “road” to the proposed turn around bounding the Fitzgerald property? Seems strange!

Estimated length of sewer line = 800 feet (to be extended from storm sewer between Berg property and lot 9 to the storm sewer shown close to building envelope for lot 6 = 800 feet

Estimated length of water line = 650 feet (based on water access across Ski Hill Road from Powder Valley. Master plan shows water extending south to a hydrant close to the lot 8 and lot 9 boundary and probably north to the hydrant close to lot 6 building envelope, but that terminus is not clearly marked. In summary:

Pavement = 400 feet
Sewer = 800 feet
Water = 650 feet

Phase 3 (Lots 9,10) If phase 3 were added to Phase I it would entail the following additional utility work:

Pavement = 950 feet
Sewer = 0 feet (line was installed with TCTS)
Water = 250 feet (based on Master Plan note that
Phase 1 water will come close to lot 9. This additional
250 feet is about what is required for the Developer to meet the
irrigation conditions outlined in the Property Boundary Agreement.

Phase 2 (Lots 1-5)

Pavement = 600 feet
Sewer = 600 feet
Water = 600 feet

Question for Driggs Planning and Zoning and for the Developer – Why not include phase 3 (lots 9,10) with Phase 1 and finish all utility work (road, water, sewer) for lots 6-10 inclusive? Yes, it does add pavement and water costs but would result in a totally finished utility corridor and allow the developer to meet their commitment to the Fitzgeralds and Berg in a more timely fashion. It might also yield lower bids from contractors to do the entire stretch than to work in segments?.

Note - The Property Boundary Agreement with DCELLC that parties agreed to included the following relevant conditions:

1. DCELL agreed to develop and implement a landscaping plan. The Plan is done – it outlines \$12,000 in plantings for Fitzgerald boundary and about \$7,000 for Berg.
2. Implementation (actual landscaping, etc.) is to be completed within 45 days of paving of Salix Way (Placing lots 9 and 10 in Phase 3 allows the developer to postpone this commitment for many years which to us seems unfair..)
3. DCELL (grantor) agreed to a **water system** on its side of the boundary to irrigate plantings. Phase 3 does not seem to indicate any placement of water to irrigate the Fitzgerald/Berg/Dreamcatcher interface.
4. DCELL (grantor) agreed that within 15 days of completion of the Teton Creek Trunk Sewer (completed in October 2008) that along that portion of Salix Way north of Teton Creek and adjacent to lots 7 and 8 Aspens Subdivision the Grantor would spread a mix of native grasses along the area disturbed by construction so as to limit nuisance dust and weeds and maintain reasonable levels of weed and/or dust control on the access road. Some seeds were scattered but TCTS contractors (HK) failed to save overburden and much of the ROW is cobble.

(Please look at attached photographs of what the TCTS line looks like as of May 2011 - In our view this is in part a Driggs and Teton County problem. Since apparently they did not provide “ground rules” for putting the land back together. Driggs PZ could partly rectify this situation by requesting as an amendment to the Amended Improvements that DCELLC provide soil to cover exposed cobbles on the sewer right of way so that native vegetation can re-establish. We believe that if DCELLC put down several truck loads of soil that nature would restore the vegetation without much help.

In Closing, we believe cost wise, disturbance wise, and for the sake of adjacent neighbors that it would make sense for The Willows to combine their proposed Phase I and Phase III into a common development unit of 5 lots and finish installing all utilities (road, water, sewer and meet the boundary agreement contract in a timely fashion.

Thank you for taking time to consider this request.

Sincerely,

James Fitzgerald 529 Quaking Aspen Drive, Driggs, Id 83422.
jamesfitzgerald@silverstar.com



Salix way Teton Creek Trunk Sewer Line – overburden was removed and not replaced – with Amended Willows proposal it could stay this way for many years. Not the right way to treat a

Close-up of cobbles, etc. No plantings will establish in this environment for many years. Thistle, etc. do come into it.



View to northwest - wooded area in background is along the boundary of of Fitzgerald/ Berg property.



From: James Fitzgerald
Sent: Thursday, October 04, 2012 3:02 PM
To: Curt Moore
Subject: Re Willows

Curt, Thanks for the discussion today. I have read the materials on the web and have a couple of comments.

In your staff recommendations please change our name from Fitzpatrick to Fitzgerald - thanks.

Also please reread my 3/12/2012 letter it regards the trespass issue with regard the sewer line on my property. I agree that the landscaping issues etc. between Dreamcatcher and Berg and us are not really a County problem but the trespass issues is a city/county one since the sewer line was put in to benefit both city (Willows) and county (Targhee Hill Estates) developments. It would seem that one of the two government agencies should work with us on posting the sewer easement on the Willows side to cut down trespass if a city/county pathway will exist on Salix Way.

Phasing you are suggesting makes sense finish by 2017.

It also seems to meet concerns in the VARD letter. I would reiterate (its in one of my letters and I do not recall which one) that we in The Aspens are concerned about the County Engineer making sure that construction work on the Willows including berms, culverts, roads, etc. do not cause downstream flooding problems onto us. Especially if Teton Creek is recovered/restored and streambed elevations rise with the expected rehabilitation project.

Thanks, Jim Fitzgerald